

AMENDED IN ASSEMBLY MARCH 30, 2000

AMENDED IN ASSEMBLY MARCH 23, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1881**

**Introduced by Assembly Member Gallegos**

February 10, 2000

---

---

An act to amend Sections 1600.5, 1607, and 2972 of, and to add Section 2972.1 to, the Penal Code, relating to mentally disordered offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1881, as amended, Gallegos. Mentally disordered offenders.

(1) Existing law authorizes the placement on outpatient status of persons convicted of a crime and committed to a state hospital or other treatment facility under specified provisions of law. Time spent on outpatient status pursuant to these provisions is not counted as actual custody and is not credited toward the person's maximum term of imprisonment.

(2) Existing law also requires the community program director of the treatment facility where a person is committed for treatment, to submit to the medical director of a state hospital and to the court, when appropriate, the opinion of the outpatient supervisor that a committed person has regained competence as specified.

This bill would include persons committed to a treatment facility as a mentally disordered prisoner as specified in the above 2 provisions.

(3) Existing law authorizes as a condition of parole, the treatment of a prisoner who has a severe mental disorder, as defined, that is not in remission, as defined, or cannot be kept in remission without treatment. Treatment includes inpatient and outpatient status.

This bill would provide that outpatient status be for a period not to exceed one year and would establish a procedure, after notice and a hearing, to either discharge the person, order the person confined to a treatment facility, or continue the person on outpatient status. The community program director or designee would be required to furnish a report and recommendation to the court and the parties. ~~If the~~ *Upon receipt by the court of a related specified report that recommends that the person be confined for treatment or continued on outpatient status, that person would be asked to sign a form advising him or her of the right confinement or continued outpatient treatment, the court shall direct that person's prior defense counsel to meet and confer with that person to explain the recommendation contained therein. The bill would also direct the court to appoint new counsel for this purpose, if necessary. The bill would provide that after this meeting, both defense counsel and the person on outpatient status shall sign a specified form concerning the person's decision whether to challenge the recommendation and proceed to a jury trial, which shall be returned to the court at least 10 days prior to the described hearing. The bill would also provide for the person's counsel to sign the form on his or her behalf if he or she refuses or is unable to do so, as specified. The bill would require that a jury trial be set for hearing within 60 days of the initial hearing if the person either requests a jury trial or fails to waive his or her right to a jury trial. By expanding the grounds for release from commitment to a treatment facility, this bill would increase the duties of local officials and would impose a state-mandated local program.*

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs



mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1600.5 of the Penal Code is  
2 amended to read:

3 1600.5. For a person committed as a mentally  
4 disordered sex offender under former Section 6316 or  
5 6316.2 of the Welfare and Institutions Code, or committed  
6 pursuant to Section 1026 or 1026.5, or committed pursuant  
7 to Section 2972, who is placed on outpatient status under  
8 the provisions of this title, time spent on outpatient status,  
9 except when placed in a locked facility at the direction of  
10 the outpatient supervisor, shall not count as actual  
11 custody and shall not be credited toward the person's  
12 maximum term of commitment or toward the person's  
13 term of extended commitment.

14 SEC. 2. Section 1607 of the Penal Code is amended to  
15 read:

16 1607. If the outpatient supervisor is of the opinion that  
17 the person has regained competence to stand trial, or is  
18 no longer insane, is no longer a mentally disordered  
19 offender, or is no longer a mentally disordered sex  
20 offender, the community program director shall submit  
21 such opinion to the medical director of the state hospital,  
22 where appropriate, and to the court which shall calendar  
23 the case for further proceedings under the provisions of  
24 Section 1372, 1026.2, or 2972 of this code or Section 6325  
25 of the Welfare and Institutions Code.

1 SEC. 3. Section 2972 of the Penal Code is amended to  
2 read:

3 2972. (a) The court shall conduct a hearing on the  
4 petition under Section 2970 for continued treatment. The  
5 court shall advise the person of his or her right to be  
6 represented by an attorney and of the right to a jury trial.  
7 The attorney for the person shall be given a copy of the  
8 petition, and any supporting documents. The hearing  
9 shall be a civil hearing, however, in order to reduce costs  
10 the rules of criminal discovery, as well as civil discovery,  
11 shall be applicable.

12 The standard of proof under this section shall be proof  
13 beyond a reasonable doubt, and if the trial is by jury, the  
14 jury shall be unanimous in its verdict. The trial shall be by  
15 jury unless waived by both the person and the district  
16 attorney. The trial shall commence no later than 30  
17 calendar days prior to the time the person would  
18 otherwise have been released, unless the time is waived  
19 by the person or unless good cause is shown.

20 (b) The people shall be represented by the district  
21 attorney. If the person is indigent, the county public  
22 defender shall be appointed.

23 (c) If the court or jury finds that the patient has a  
24 severe mental disorder, that the patient's severe mental  
25 disorder is not in remission or cannot be kept in remission  
26 without treatment, and that by reason of his or her severe  
27 mental disorder, the patient represents a substantial  
28 danger of physical harm to others, the court shall order  
29 the patient recommitted to the facility in which the  
30 patient was confined at the time the petition was filed, or  
31 recommitted to the outpatient program in which he or  
32 she was being treated at the time the petition was filed,  
33 or committed to the State Department of Mental Health  
34 if the person was in prison. The commitment shall be for  
35 a period of one year from the date of termination of parole  
36 or a previous commitment or the scheduled date of  
37 release from prison as specified in Section 2970. Time  
38 spent on outpatient status, except when placed in a  
39 locked facility at the direction of the outpatient  
40 supervisor, shall not count as actual custody and shall not

1 be credited toward the person's maximum term of  
2 commitment or toward the person's term of extended  
3 commitment.

4 (d) A person shall be released on outpatient status if  
5 the committing court finds that there is reasonable cause  
6 to believe that the committed person can be safely and  
7 effectively treated on an outpatient basis. Except as  
8 provided in this subdivision, the provisions of Title 15  
9 (commencing with Section 1600) of Part 2, shall apply to  
10 persons placed on outpatient status pursuant to this  
11 paragraph. The standard for revocation under Section  
12 1609 shall be that the person cannot be safely and  
13 effectively treated on an outpatient basis.

14 (e) Prior to the termination of a commitment under  
15 this section, a petition for recommitment may be filed to  
16 determine whether the patient's severe mental disorder  
17 is not in remission or cannot be kept in remission without  
18 treatment, and whether by reason of his or her severe  
19 mental disorder, the patient represents a substantial  
20 danger of physical harm to others. The recommitment  
21 proceeding shall be conducted in accordance with the  
22 provisions of this section.

23 (f) Any commitment under this article places an  
24 affirmative obligation on the treatment facility to provide  
25 treatment for the underlying causes of the person's  
26 mental disorder.

27 (g) Except as provided in this subdivision, the person  
28 committed shall be considered to be an involuntary  
29 mental health patient and he or she shall be entitled to  
30 those rights set forth in Article 7 (commencing with  
31 Section 5325) of Chapter 2 of Part 1 of Division 5 of the  
32 Welfare and Institutions Code. Commencing January 1,  
33 1986, the State Department of Mental Health may adopt  
34 regulations to modify those rights as is necessary in order  
35 to provide for the reasonable security of the inpatient  
36 facility in which the patient is being held. This subdivision  
37 and the regulations adopted pursuant thereto shall  
38 become operative on January 1, 1987, except that  
39 regulations may be adopted prior to that date.

1 SEC. 4. Section 2972.1 is added to the Penal Code, to  
2 read:

3 2972.1. (a) Outpatient status shall be for a period not  
4 to exceed one year. Pursuant to Section 1606, at the end  
5 of a period of outpatient status approved by the court, the  
6 court shall, after actual notice to the prosecutor, the  
7 defense attorney, the community program director or a  
8 designee, the medical director of the facility that is  
9 treating the person, and the person on outpatient status,  
10 and after a hearing in court, either discharge the person  
11 from commitment under appropriate provisions of law,  
12 order the person confined to a treatment facility, or  
13 renew its approval of outpatient status.

14 (b) Prior to the hearing described in subdivision (a),  
15 the community program director or a designee shall  
16 furnish a report and recommendation to the court, the  
17 prosecution, the defense attorney, the medical director of  
18 the facility that is treating the person, and the person on  
19 outpatient status. If the recommendation is that the  
20 person continue on outpatient status or be confined to a  
21 treatment facility, the report shall also contain a  
22 statement that conforms with requirements of  
23 subdivision (c).

24 ~~(c) (1) The community program director or a~~  
25 ~~designee shall provide a copy of the report, and explain~~  
26 ~~his or her recommendation to the person on outpatient~~  
27 ~~status. If the recommendation is that the person continue~~  
28 ~~on outpatient status or be confined to a treatment facility,~~  
29 ~~the community program director or a designee shall ask~~  
30 ~~the person to sign a form that shall be set forth as follows:~~

31 ~~You have a right to have a jury trial to determine~~  
32 ~~whether or not your outpatient status should be~~  
33 ~~continued. At this trial, the government will have the~~  
34 ~~burden of proving, beyond a reasonable doubt, that you~~  
35 ~~are in need of further treatment.~~

36 ~~Check One~~

37 ~~---- I do not believe that I need further treatment, and~~  
38 ~~I demand a jury trial to decide the question.~~

39 ~~---- I accept the recommendation that I continue~~  
40 ~~treatment.~~

~~(2) The form shall be signed by the person and witnessed by the community program director or a designee. If the person will not sign the form, the community program director or a designee shall sign a statement that the recommendation was explained to the person and that the person would not sign the form.~~

~~(d) If the person on outpatient status either requests a jury trial or fails to waive his or her right to a jury trial, a jury trial that meets all the requirements of Section 2972 shall be set within 60 days of the initial hearing. However, the court may conduct a further hearing to determine whether or not the person on outpatient status desires to waive his or her right to a jury trial. The court may compel the community program director and the person on outpatient status to attend the hearing.~~

*(c) Upon receipt of a report prepared pursuant to Section 1606 that recommends confinement or continued outpatient treatment, the court shall direct prior defense counsel, or, if necessary, appoint new defense counsel, to meet and confer with the person who is on outpatient status and explain the recommendation contained therein. Following this meeting, both defense counsel and the person on outpatient status shall sign and return to the court a form which shall read as follows:*

*“Check One:*

*“\_\_\_\_\_ I do not believe that I need further treatment and I demand a jury trial to decide this question.*

*“\_\_\_\_\_ I accept the recommendation that I continue treatment.”*

*The signed form shall be returned to the court at least 10 days prior to the hearing described in subdivision (a). If the person on outpatient status refuses or is unable to sign the form, his or her counsel shall indicate, in writing, that the form and the report prepared pursuant to Section 1606 were explained to the person and the person refused or was unable to sign the form.*

1 (d) *If the person on outpatient status either requests*  
2 *a jury trial or fails to waive his or her right to a jury trial,*  
3 *a jury trial meeting all of the requirements of Section 2972*  
4 *shall be set within 60 days of the initial hearing.*

5 (e) The court shall notify the community program  
6 director or a designee, *the person on outpatient status,*  
7 and the medical director or person in charge of the  
8 facility providing treatment of the person whether or not  
9 the person was found suitable for release.

10 SEC. 5. Notwithstanding Section 17610 of the  
11 Government Code, if the Commission on State Mandates  
12 determines that this act contains costs mandated by the  
13 state, reimbursement to local agencies and school  
14 districts for those costs shall be made pursuant to Part 7  
15 (commencing with Section 17500) of Division 4 of Title  
16 2 of the Government Code. If the statewide cost of the  
17 claim for reimbursement does not exceed one million  
18 dollars (\$1,000,000), reimbursement shall be made from  
19 the State Mandates Claims Fund.

